

AMENDED IN ASSEMBLY JUNE 1, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1029

Introduced by Assembly Member Jerome Horton

February 22, 2005

~~An act to amend Section 30101.7 of the Revenue and Taxation Code, relating to cigarettes and tobacco products.~~ *An act to amend Sections 15604 and 15622 of, and to add Sections 8335, 15606.2, and 15622.5 to, the Government Code, relating to the State Board of Equalization.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1029, as amended, Jerome Horton. ~~Tobacco products: sales: noncompliance.~~ *The State Board of Equalization: ex parte communications, decisions, and determinations.*

(1) The California Constitution establishes the State Board of Equalization consisting of the Controller and 4 members elected to 4-year terms at gubernatorial elections. Existing law authorizes the board to appoint its secretary who holds office at the pleasure of the board.

This bill would provide that the appointment of the secretary is subject to Senate confirmation. The bill would also prohibit the board from participating in the personnel process, except as specified.

(2) Existing law authorizes the board to sell at prices fixed by the board copies of compilations of the revenue laws of the state, maps, and other documents.

This bill would require the board to publish and make readily available on the Internet all board decisions and determinations and would authorize the board to sell copies of any decision or determination required to be published.

This bill would prohibit a board member or any person who intends to influence the decision of a board member on an adjudicatory matter before the board, except a staff member acting in his or her official capacity, to conduct an ex parte communication during the 2-week period preceding an adjudicatory proceeding on the matter. The bill would require the full disclosure of an ex parte communication in the board's record if an ex parte communication occurs during the 2 weeks preceding an adjudicatory proceeding, and if an ex parte communication occurs in violation of this provision, the board would be required to postpone the adjudicatory proceeding for at least 2 weeks after the date on which the board member fully discloses and makes public that communication.

~~(1) The Cigarette and Tobacco Products Tax Law requires every distributor of cigarettes to pay taxes, as prescribed, on the distribution of cigarettes. In addition to the requirement to pay taxes on the distribution of cigarettes, existing law also requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. Existing federal law, known as the Jenkins Act, requires any person that sells or transfers, in interstate commerce, cigarettes into a state that taxes the sale or use of cigarettes to file and report specified information with the tobacco tax administrator of that state.~~

~~Existing law requires, except under specified circumstances, that each retail sale of cigarettes in the state is to be a face-to-face sale, as defined. Existing law exempts a person from this face-to-face sale restriction, if that person has paid all applicable state taxes and is in compliance with the federal Jenkins Act.~~

~~This bill, in addition to the existing requirements for an exception from the restrictions of face-to-face sales of cigarettes, would also require a person to be in full compliance with state licensure provisions and with a specified provision of the Health and Safety Code.~~

~~(2) Existing law authorizes the Attorney General, or a city attorney, county counsel, or district attorney to bring a civil action, as specified, to enforce these provisions that apply to a retail seller of cigarettes and tobacco products, including the imposition of a fine in the amounts specified.~~

~~This bill would authorize the Attorney General, or a city attorney, county counsel, or district attorney to bring a separate civil action against a retail seller that fails to pay taxes on products sold in a~~

~~face-to-face transaction, and would impose a penalty against that retail seller in an amount equal to 500% of the unpaid taxes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8335 is added to the Government Code,
2 to read:

3 8335. (a) The Legislature finds and declares that the State
4 Board of Equalization, the Franchise Tax Board, and the
5 Employment Development Department shall cooperate with each
6 other to acquire new technology, computers, and equipment that
7 are compatible among each of these agencies.

8 (b) In order to facilitate the sharing of information, the State
9 Board of Equalization, the Franchise Tax Board, and the
10 Employment Development Department shall use a common
11 identification number, such as a taxpayer's identification number
12 for federal tax purposes, whenever it is apparent that the
13 agencies will be sharing any information with each other
14 regarding any person with a matter before any of these agencies.

15 SEC. 2. Section 15604 of the Government Code is amended to
16 read:

17 15604. (a) The board may appoint its secretary, *subject to*
18 *Senate confirmation*, and prescribe and enforce his or her duties.
19 The secretary shall hold office during the pleasure of the board
20 and shall receive ~~such~~ compensation as *prescribed by the board*
21 ~~prescribes. It may board.~~

22 (b) The board may employ ~~such~~ expert and clerical assistants
23 as it deems necessary in the performance of its powers and
24 duties. *However, the board shall not participate in the personnel*
25 *process, except for (1) hiring that is at or above the level of*
26 *Career Executive Assistant or district administrator, or hiring*
27 *immediate staff; (2) legal matters coming before the board in*
28 *connection with personnel; and (3) as otherwise necessary to*
29 *discharge its duties derived from the California Constitution.*

30 SEC. 3. Section 15606.2 is added to the Government Code, to
31 read:

32 15606.2. (a) For the purposes of this section, "ex parte
33 communication" means any oral or written communication

1 *between a member of the board and an interested person, about*
2 *an adjudicatory matter before the board, other than purely*
3 *procedural matters, that does not occur in a public hearing,*
4 *workshop, or other official proceeding, or on the official record*
5 *of the proceeding on the matter.*

6 *(b) No board member or any person who intends to influence*
7 *the decision of a board member on an adjudicatory matter before*
8 *the board, except a staff member of the board acting in his or her*
9 *official capacity, shall conduct an ex parte communication*
10 *during the two-week period preceding an adjudicatory*
11 *proceeding on the matter.*

12 *(c) If an ex parte communication occurs during the two weeks*
13 *preceding an adjudicatory proceeding on the matter, a full*
14 *disclosure of the ex parte communication shall be entered in the*
15 *board's record. The disclosure of an ex parte communication*
16 *shall include the names of the participants, the action discussed,*
17 *and the position of the party in the communication.*

18 *(d) Communications cease to be ex parte communications*
19 *prior to the two weeks preceding an adjudicatory proceeding on*
20 *the matter when either of the following occurs:*

21 *(1) The board member or the person who engaged in the*
22 *communication with the board member fully discloses the*
23 *communication and requests in writing that it be placed in the*
24 *board's official record of the proceeding.*

25 *(2) When two or more board members receive substantially*
26 *the same written communication, or are party to the same oral*
27 *communication, from the same party on the same matter, and a*
28 *single board member fully discloses the communication on behalf*
29 *of the other board member or members who received the*
30 *communication and requests in writing that it be placed in the*
31 *board's official record of the proceeding.*

32 *(e) If an ex parte communication occurs in violation of*
33 *subdivision (b), the board shall postpone the adjudicatory*
34 *proceeding for at least two weeks after the date on which the*
35 *board member fully discloses and makes public the ex parte*
36 *communication.*

37 *SEC. 4. Section 15622 of the Government Code is amended to*
38 *read:*

39 *15622. The board may sell at prices fixed by the board copies*
40 *of compilations of the revenue laws of the—State state, any*

1 *decision or determination required to be published pursuant to*
2 *Section 15622.5, maps, and other documents.*

3 *SEC. 5. Section 15622.5 is added to the Government Code, to*
4 *read:*

5 *15622.5. The board shall publish and make readily available*
6 *on the Internet all board decisions and determinations.*

7 ~~SECTION 1. Section 30101.7 of the Revenue and Taxation~~
8 ~~Code is amended to read:~~

9 ~~30101.7. (a) It is the intent of the Legislature in enacting this~~
10 ~~section to facilitate the collection of all applicable state surtaxes~~
11 ~~and sales or use taxes on cigarettes sold to residents of the state.~~

12 ~~(b) Except as provided in subdivision (d), no person may~~
13 ~~engage in a retail sale of cigarettes in California unless the sale is~~
14 ~~a vendor-assisted, face-to-face sale.~~

15 ~~(c) For the purposes of this section, "face-to-face sale" means~~
16 ~~a sale in which the purchaser is in the physical presence of the~~
17 ~~seller or the seller's employee or agent at the time of the sale. A~~
18 ~~face-to-face sale does not include any transaction conducted by~~
19 ~~mail order, the Internet, telephone, or any other anonymous~~
20 ~~transaction method in which the buyer is not in the seller's~~
21 ~~physical presence or the physical presence of the seller's~~
22 ~~employee or agent at the time of the sale.~~

23 ~~(d) A person may engage in a non-face-to-face sale of~~
24 ~~cigarettes to a person in California provided that all of the~~
25 ~~following conditions are met:~~

26 ~~(1) The seller has fully complied with all of the requirements~~
27 ~~of Chapter 10A (commencing with Section 375) of Title 15 of~~
28 ~~the United States Code, otherwise known as the Jenkins Act.~~

29 ~~(2) The seller has fully complied with~~

30 ~~(~~
31 ~~(all of the requirements imposed by Sections 22972 to~~
32 ~~22974.8, inclusive, of the Business and Professions Code and~~
33 ~~imposed by Sections 22980.1 to 22982, inclusive, of the Business~~
34 ~~and Professions Code.~~

35 ~~(3) The seller has collected and remitted to the board all~~
36 ~~applicable California taxes imposed on cigarettes, or, if~~
37 ~~applicable, has provided verification and evidence that the~~
38 ~~applicable taxes have already been paid.~~

1 ~~(4) The seller has verified that the manufacturer of the~~
2 ~~cigarettes is in full compliance with paragraph (2) of subdivision~~
3 ~~(a) of Section 104557 of the Health and Safety Code.~~

4 ~~(5) The seller includes on the outside of the shipping~~
5 ~~container for any cigarettes shipped to a resident in California~~
6 ~~from any source in the United States an externally visible and~~
7 ~~easily legible notice located on the same side of the shipping~~
8 ~~container as the address to which the package is delivered stating~~
9 ~~as follows:~~

10 ~~—“IF THESE CIGARETTES HAVE BEEN SHIPPED TO~~
11 ~~YOU FROM A SELLER LOCATED OUTSIDE OF THE~~
12 ~~STATE IN WHICH YOU RESIDE, THE SELLER HAS~~
13 ~~REPORTED PURSUANT TO FEDERAL LAW THE SALE~~
14 ~~OF THESE CIGARETTES TO YOUR STATE TAX~~
15 ~~COLLECTION AGENCY, INCLUDING YOUR NAME~~
16 ~~AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE~~
17 ~~FOR ALL APPLICABLE UNPAID STATE TAXES ON~~
18 ~~THESE CIGARETTES.”~~

19 ~~(e) The State Board of Equalization shall provide information~~
20 ~~to the Attorney General relative to a seller’s failure or attempt to~~
21 ~~comply with the provisions of subdivision (d).~~

22 ~~(f) The Attorney General or a city attorney, county counsel, or~~
23 ~~district attorney may bring a civil action to enforce this section~~
24 ~~against any person that violates this section and, in addition to~~
25 ~~any other remedies provided by law, the court shall assess a civil~~
26 ~~penalty in accordance with the following schedule:~~

27 ~~(1) A civil penalty of not less than one thousand dollars~~
28 ~~(\$1,000) and not more than two thousand dollars (\$2,000) for the~~
29 ~~first violation.~~

30 ~~(2) A civil penalty of not less than two thousand five hundred~~
31 ~~dollars (\$2,500) and not more than three thousand five hundred~~
32 ~~dollars (\$3,500) for the second violation within a five-year~~
33 ~~period.~~

34 ~~(3) A civil penalty of not less than four thousand dollars~~
35 ~~(\$4,000) and not more than five thousand dollars (\$5,000) for the~~
36 ~~third violation within a five-year period.~~

37 ~~(4) A civil penalty of not less than five thousand five hundred~~
38 ~~dollars (\$5,500) and not more than six thousand five hundred~~
39 ~~dollars (\$6,500) for a fourth violation within a five-year period.~~

1 ~~(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth~~
2 ~~or subsequent violation within a five-year period.~~

3 ~~(g) In addition to the civil actions and penalties authorized~~
4 ~~pursuant to subdivision (f), the Attorney General or a city~~
5 ~~attorney, county counsel, or district attorney may bring a civil~~
6 ~~action against any person that fails to pay any tax that applies to~~
7 ~~a face-to-face sale of cigarettes in this state and, in addition to~~
8 ~~any other remedies provided by law, the court shall assess a civil~~
9 ~~penalty in an amount equal to 500 percent of the unpaid taxes~~
10 ~~that are owed by that person.~~

11 ~~(h) The Attorney General shall provide an annual report to the~~
12 ~~Legislature regarding all actions taken to comply with, and~~
13 ~~enforce, the provisions of subdivision (d).~~

14 ~~(i) This section does not prohibit any lawful sale of a tobacco~~
15 ~~product that occurs by means of a vending machine.~~

16 ~~(j) Nothing in this section shall relieve the seller of cigarettes~~
17 ~~from any other applicable requirement of state law relating to the~~
18 ~~sale of cigarettes.~~

19 ~~(k) The provisions of this section are severable. If any~~
20 ~~provision of this section or its application is held invalid, that~~
21 ~~invalidity shall not affect other provisions or applications that can~~
22 ~~be given effect without the invalid provision or application.~~